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Hon. FREDERICK P. CORBIT

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In Re	)	
	)	
1 MIN LLC,	)	Case No. 24-01519
	)	Lead Case
Debtor.	)	
	)	
HOTEL AT SOUTHPORT LLC,	)	Case No. 24-01520
	)	
Debtor.	)	
	)	
TWELFTH FLOOR, LLC,	)	Case No. 24-01521
	)	
Debtor.	)	OBJECTION TO MOTION TO
	)	SEAL
	)	[Docket # 132]

The United States Trustee's Office objects to the debtors' motion to seal the  
September MOR [Docket # 132] as it is not specific enough and its request IS to  
block **all** access to the MOR is far too broad.

OBJECTION TO MOTION TO SEAL

1 The motion does not identify the category of the information, The motion requests  
2 ALL access be blocked. The motion does not explain why redaction of some  
3 specific information or some lesser remedy is no///t appropriate.

## 4 5 **JURISDICTION**

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7 Jurisdiction is based upon 28 U.S.C. section 1334, and the United States  
8 Trustee appears pursuant to 28 U.S.C. section 586 and 11 U.S.C. section 307. This  
9 motion is premised on section 107 of Title 11.

## 10 11 **ARGUMENT**

12 “There is a strong presumption and public policy in favor of public access to  
13 court records.” *Togut v. Deutsche Bank AG, Cayman Islands Branch et al., (In re*  
14 *Anthracite Capital, Inc.)*, 492 B.R. 162, 170 (Bankr. S.D.N.Y. 2013). Section  
15 107(a) of the United States Bankruptcy Code (the “Code”), codifying this strong  
16 public policy in favor of public access to documents filed in the bankruptcy court,  
17 provides that “a paper filed in a case under this title and the dockets of a  
18 bankruptcy court are public records and open to examination by an entity at  
19 reasonable times without charge.” 11 U.S.C. § 107(a). The concept of sealing  
20 portions of the Court's files and records is inimical to the strong guiding principle  
21 that court records are public documents. *Nixon v. Warner Communications, Inc.*,  
22 435 U.S. 589, 597-98 (1978). Public access to judicial records “is of special  
23 importance in the bankruptcy arena, as unrestricted access to judicial records

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1 fosters confidence among creditors regarding the fairness of the bankruptcy  
2 system.” *Gitto*, 422 F.3d at 7 (citing *Ferm v. United States Trustee (In re*  
3 *Crawford)*, 194 F.3d. 954, 960 (9th Cir. 1999)). Moreover, in *Crawford*, the Ninth  
4 Circuit held that § 107 is not impermissibly overbroad, and that "a blanket open  
5 access rule obviously fosters public confidence in a way that a regime shot through  
6 with exceptions might not." *Id.* at 960. “Because of the vital public interest in open  
7 judicial proceedings, the Government has a general overriding affirmative duty to  
8 oppose their closure.” 28 C.F.R. § 50.9.

12       There are a few narrow exceptions to the public access presumption. The  
13 Code authorizes the Court to protect entities “with respect to a trade secret or  
14 confidential research, development, or commercial information” and to “protect a  
15 person with respect to scandalous or defamatory matter contained in a paper filed”  
16 in a bankruptcy case. 11 U.S.C. § 107(b). The Code also permits for the protection  
17 of certain personal identifiable information to mitigate, among other things, any  
18 undue risk of identity theft. 11 U.S.C. § 107(c). The *Crawford* court noted Section  
19 107(b)'s two exceptions "are construed narrowly and do not affect our analysis  
20 regarding the public confidence fostered by the otherwise broad scope of § 107."  
21 *Crawford*, 194 F.3d. at 960 n.8.

26       The burden is on the movant “to provide the court with specific factual and  
27 legal authority demonstrating that a particular document at issue is properly  
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1 classified as ‘confidential’ or ‘scandalous.’” *See, In re Food Mgmt. Group*, 359  
2 B.R. 543, 561 (Bankr. S.D.N.Y. 2007). In addition, the movant must demonstrate  
3 that “disclosure will work a clearly defined and serious injury...” *Goldstein v.*  
4 *Forbes (In re Cendant Corp)*, 260 F.3d 183, 194 (3d Cir. 2001). The movant must  
5 show “sufficient threat of irreparable harm” before information will be sealed, and  
6 specificity is essential. *Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3rd  
7 Cir. 1984). Broad allegations of harm, without specific examples or articulated  
8 reasoning, are insufficient. *Miller v. Indiana Hospital*, 16 F.3d 549, 551 (3rd Cir.  
9 1994). Harm that is only speculative cannot support a sealing order. *In re Itel*  
10 *Corp.*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982).

15 Section 107(b)(1) “is meant to prevent business competitors from seeing  
16 confidential business-related information and using that information to the  
17 detriment of the movant. *See Gowan v. Westford Asset Mgmt. LLC (In re Dreier*  
18 *LLP)*, 485 B.R. 821 822-23 (Bankr. S.D.N.Y. 2013)). Commercial information is  
19 “information which would cause ‘an unfair advantage to competitors by providing  
20 them information as to the commercial operations of the [party seeking to seal the  
21 information].’” *Orion Pictures*, 21 F.3d at 27 (quoting *Ad Hoc Protective Comm.*  
22 *for 10 ½ Debenture Holders v. Intel Corp. (In re Intel Corp.)*, 17 B.R. 942, 944  
23 (9th Cir. 1982)). The information must be “reasonably expected to cause the entity  
24 commercial injury,” which means that “competitors will gain an unfair advantage.”

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1 *In re Alterra Healthcare Corp.*, 353 B.R. 66, 73 (Bankr.D. Del. 2006). The unfair  
2 advantage must be in favor of a market competitor, not simply a creditor or  
3 claimant.  
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5 All the previous argument is the backdrop simply to argue the motion does  
6 not carry its burden to identify the type of information or the claimed damage as  
7 being within section 107.  
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9 One further note, the moving party has not provided the U.S. Trustee with  
10 the documents as required in section 107(c)(3) so we cannot advise the court on the  
11 merits of the information itself.  
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15 Wherefore, the court is requested to deny this motion, or require the moving  
16 party to provide a sufficient basis for sealing the whole MOR for all eternity.  
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20 D A T E D this 9TH day of December, 2024.

21 Respectfully submitted,

22 JONAS V. ANDERSON  
23 Acting United States Trustee for  
24 Region 18

25 /s/ Gary W Dyer

26 Gary W. Dyer  
27 Assistant U.S. Trustee  
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